



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



Hervey LeClerc d/b/a
LeClerc Tire Shop
23 Sanborn Road
Londonderry, NH 03053

ADMINISTRATIVE ORDER
No. WMD 00-08
April 17, 2000

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Hervey LeClerc d/b/a LeClerc Tire Shop pursuant to RSA 149-M:15. This Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division (DES) is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH 03301. DES is responsible for regulating the management, transportation and disposal of solid waste in New Hampshire pursuant to RSA 149-M and its implementing regulations, Env-Wm 100 to 300 and 2100 to 3700.
2. Hervey LeClerc is an individual doing business as Leclerc Tire Shop (LeClerc) and having a mailing address of 23 Sanborn Road, Londonderry, NH 03053.

C. STATEMENT OF FACTS AND LAW

1. Hervey and Rita LeClerc are the owners of land at 23 Sanborn Road, Londonderry, NH, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 1352, Page 294, identified on the Londonderry, NH Tax Maps as Map 15, lot 87 (the Site).
2. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
3. RSA 149-M:4, XXI defines "refuse" as "any waste product which is composed of wholly or partly of such materials as brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."
4. On January 28, 1985, the Division of Public Health (DPH), predecessor to DES for solid waste regulation, conducted an inspection of the Site. DPH observed and estimated that there were approximately 200,000 tires present at the Site.
5. The tires at the Site are solid waste as defined by RSA 149-M:4, XXI.

6. RSA 149-M:4, IX defines a "facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."

7. The Site constitutes a "facility" as defined by RSA 149-M:4, IX.

8. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."

9. A review of DES files shows that LeClerc has neither applied for nor holds a permit to operate a solid waste facility at any New Hampshire location.

10. On January 28, 1985, the DPH hand delivered an Administrative Order dated January 25, 1985, to Mr. LeClerc. The Administrative Order informed LeClerc that by accepting and storing used tires at the Site it was operating an unpermitted solid waste facility. This letter also informed LeClerc to cease and desist allowing any further disposal of tires at the Site, as well as to store the tires at the Site in accordance with the regulations.

11. In November 1985, the New Hampshire Department of Justice (NHDOJ) brought complaints against LeClerc for operating an unpermitted solid waste and five counts of accepting tires in violation of a cease and desist order.

12. In October 1986, LeClerc pleaded guilty to all charges brought by the NHDOJ, and was ordered to apply for a solid waste facility permit within two months of the sentence.

13. As of the date of this Administrative Order (Order), LeClerc has not applied for the necessary solid waste facility permit.

14. On November 10, 1994, there was a major fire involving tires at the Site.

15. Subsequent to the 1994 fire, DES helped negotiate an agreement between LeClerc and Browning-Ferris Industries, Inc. (BFI) to remove approximately 200,000 tires from the Site.

16. Between March 3, 1997 and April 5, 1997, BFI removed 191,476 tires from the Site and between June 5, 1997 and June 7, 1997, BFI removed 13,028 tires from the Site. It was estimated that approximately 20,000 tires remained at the Site after the removal.

17. On January 12, 2000, another fire involving approximately 10,000 tires occurred at the Site.

18. On January 13, 2000, DES conducted a follow up inspection of the Site. DES estimated that there were approximately 20,000 tires (including the tires involved in the January 12, 2000 fire) at the Site. It appears that few, if any, tires have been added to or removed from the pile since June 8, 1997.

19. Env-Wm 2605.02(b) requires tires that are stored outdoors to be stored in one of the following manners

F. APPEAL

If you are aggrieved by this Order, you may appeal this decision to the Waste Management Council. Such an appeal must be made to the Council within thirty (30) days of issuance of this Order in accordance with Env-WMC 200. Such an appeal must be addressed to Chairman, Waste Management Council, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095. Appealing the Order does not automatically relieve you of your obligation to comply with the Order.

G. OTHER PROVISIONS

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.

Please note that RSA 149-M provides for civil and criminal penalties and administrative fines for violations of the statute or any rule adopted by DES relative to the statute. RSA 149-M:15 provides for civil forfeitures of up to \$25,000 for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further enforcement action against LeClerc, including referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. Please be advised that DES reserves the right to pursue administrative penalties for the violations noted above.

DES personnel will continue to monitor LeClerc's compliance with status and will take appropriate action should additional violations occur. LeClerc remains obligated to comply with all applicable requirements, in particular RSA 149-M and the New Hampshire Solid Waste Rules, specifically Env-Wm 2605.02.

COPY

Philip J. O'Brien, Ph.D., Director
Waste Management Division
Department of Environmental Services

COPY

Robert W. Varney, Commissioner
Department of Environmental Services

CERTIFIED MAIL/RRR #: Z 214 231 859

Enclosure

cc: DB/FILE/ORDER
Gretchen Rule, Enforcement Coordinator, DES
Public Information Coordinator, DES
Carl Woodbury, DES, SWCS
Michael Walls, Sr. Assistant Attorney General
Al Sypek, Fire Chief, Londonderry, NH

- b. In transfer containers; or
- c. In stockpiles as follows:
 - (1) The diameter of the piles shall not exceed 25 feet;
 - (2) The height of the piles shall not exceed 15 feet;
 - (3) Fire lanes no less than 25 feet in width shall be maintained around each pile;
 - (4) Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolitic oils or other liquids generated by fire; and
 - (5) The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire company capable of extinguishing the fire arrives.

20. The tires observed on January 28, 1985, November 10, 1994, January 10, 2000, and January 13, 2000 at the Site were not stored in accordance with Env-Wm 2605.02(b).

D. DETERMINATION AND NOTICE OF VIOLATION

- 1. LeClerc has violated RSA 149-M:9, I by operating an unpermitted solid waste facility.
- 2. LeClerc has violated Env-Wm 2605.02(b) by failing to comply with tire storage standards.

E. ORDER

Based on the above findings and determinations, DES hereby orders LeClerc as follows:

Refrain from accepting solid waste at this Site, specifically including used tires.

- 2. **Within 90 days** receipt of this Order, store tires in accordance with Env-Wm 2605.02(b) of the New Hampshire Solid Waste Rules, until such time as the tires can be removed to a permitted solid waste facility. A copy of this regulation is enclosed for reference.
- 3. **Within 270 days**, remove all tires to a permitted solid waste facility.
- 4. Submit **monthly** written status reports to DES certifying that corrective measures have been implemented in accordance with E.1-E.3. Submit the first report **within thirty (30)** calendar days of the date of this Order and continue on a monthly basis until all work is complete. The final report shall certify that compliance has been achieved. Include in the report supporting documentation (disposal receipts, photographs, etc.) describing those measures taken to achieve compliance and copies of any written plans or procedures developed.

Please address correspondence to:

Kenneth W. Marschner, Administrator
DES, WMD
6 Hazen Drive
Concord, New Hampshire 03301